IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6780 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAPILABEN WD/O LALJIBHAI SENDHAJI THAKOR
Versus
STATE OF GUJARAT & ORS.

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Appearance :
MR HR PRAJAPATI for the Petitioner
MR APURVA DAVE AGP for the Respondents

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 12/12/2007

ORAL JUDGMENT

1. Heard Shri H R Prajapati, learned advocate for the petitioner and Shri Apurva Dave, learned AGP for

respondent State authorities.

2. The petitioner-detenue has challenged the legality and validity of the order of detention dated 07-02-2007 passed by the Police Commissioner, Ahmedabad City, in exercise of powers under sub-section (2) of Section 3 of Gujarat Prevention of Anti-social Activities Act, 1985 (for short “the PASA Act”).

3. The petitioner-detenue has been branded as a “bootlegger” within the meaning of Section 2(b) of PASA Act. The grounds of detention supplied to the petitioner indicate that for recording subjective satisfaction, the detaining authority has relied on seven different cases of bootlegging liquor registered against the detenue being C.R.No.5554/05, C.R.No.5555/05, C.R.No.376/06, C.R.No.5213/06, C.R.No.5553/06, C.R.No.5352/06 and C.R.No.5032/07 under the Prohibition Act. All the above cases are registered at different police stations of Ahmedabad City relating to transporting foreign made liquor. The detaining authority has considered certain statements of witnesses, and, thereafter, the detention order came to be passed.

4. The learned Advocate for the detenue has assailed the impugned order of detention on several grounds as stated in the memo of petition. However, he has confined his arguments mainly on the ground that very small quantities are seized from the detenue and such activities of the detenu as a bootlegger cannot be proved adversely affecting or is likely to affect adversely the maintenance of public order.

5. The learned Counsel for the detenu submitted that the detaining authority ought not to have recorded subjective satisfaction on mere registration of above criminal cases which are pending that the activities of the detenu have potential to disturb the public order.

6. Shri Apurva Dave, learned AGP has opposed this petition and the contention of the learned advocate for detenue regarding the small quantities of liquor seized from the detenue on the ground that such bootlegging activities were carried out in the residential area.

7. This petition is capable of being disposed of on

the sole ground that the activities of the petitioner were not prejudicial to the maintenance of public order. In the present case, merely on the basis of commission of offences of bootlegging, it cannot be said that the activities of the detenue are prejudicial to the maintenance of public order. To reach to the subjective satisfaction that bootlegging activities of the detenue and her involvement in aforestated offence are prejudicial to the maintenance of public order, there should be cogent and credible material showing that the activities of the petitioner directly or indirectly were causing or were likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property etc. while underaking this exercise, the detaining authority must draw a clear line between the cases falling within the breach of law and order and breach of public order. In the opinion of this Court, the activities of the present petitioner-detenue can at the most fall within breach of law and order which can be adequately punished otherwise. In this context reference may be had to the decision rendered in the case of **Harpreet Kaur Vs. State of Maharashtra,** reported in **1992 SC 797,**

wherein it has been held that involvement of the accused in fourteen offences cannot be said to be prejudicial or dangerous to the maintenance of public tranquility and the authority was not justified in arriving at the subjective satisfaction that the activities of the petitioner were likely to affect the maintenance of public tranquility.

8. In view of the above settled legal position, the say of the learned Counsel for the detenue that the detaining authority has committed grave error in arising at a subjective satisfaction that the detenue is a “bootlegger” and her activities are prejudicial or dangerous to maintenance of public order requires to be accepted. The order of detention, is, therefore, not sustainable in the eye of law.

9. For the reasons recorded above, the petition is allowed. The impugned order of detention dated 07.02.2007 passed by the Police Commissioner, Ahmedabad City is quashed and set aside. The detenue Kapilaben wd/o. Laljibhai Sendhaji Thakor is ordered to be set at liberty forthwith if not required in connection with any other case by any other

authority. Rule is made absolute accordingly. Direct service is permitted.

(***M.D.SHAH, J.)***

Amit/-